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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. CR 08-01147 DDP
Plaintiff,)
v.) **ORDER DENYING DEFENDANT'S MOTION**
NATHANIEL NEWHOUSE,) **FOR RELEASE ON BOND PENDING**
Defendant.) **APPEAL**
[Dkt. No. 234]

Presently before the court is Defendant Nathaniel Newhouse ("Newhouse")'s Motion for Release on Bond Pending Appeal. Having considered the submissions of the parties, the court denies the motion and adopts the following order.

I. Legal Standard

A defendant may be released on bond pending appeal if the court finds 1) clear and convincing evidence that the defendant is not likely to flee or pose a danger to the community or to any person, and 2) that the appeal is not made for purposes of delay and "raises a substantial question of law or fact likely to result" in reversal, new trial, or a sentence that does not require

1 continued imprisonment.¹ 18 U.S.C. § 3143. Where, as here, a
2 defendant is convicted of certain drug offenses, it must also be
3 "clearly shown that there are exceptional reasons why such person's
4 detention would not be appropriate."² 18 U.S.C. § 3145(c); United
5 States v. Garcia, 340 F.3d 1013, 1015 (9th Cir. 2003).

6 **II. Discussion**

7 Newhouse asserts that exceptional reasons warrant his release
8 pending appeal for two reasons. First, Newhouse argues that the
9 crimes of which he was convicted, which involved prescription
10 medications, are "not in the same class as typical federal drug
11 offenses" that carry similar sentences. (Motion at 5.) Second,
12 Newhouse contests that there is an "unusually strong" chance that
13 he will succeed on appeal.³ (Mot. at 1, 5.) The court will
14 address each argument in turn.

15 In United States v. Garcia, the Ninth Circuit held that this
16 court has broad discretion to consider a wide range of factors and
17 the totality of the circumstances of a particular case in
18 determining whether "exceptional reasons" warrant a defendant's
19 release on bond. Garcia, 340 F.3d at 1018. The court explained
20 that relevant factors might include, for example, aberrant activity

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22 ¹ A party may seek approval of a supersedeas bond in this
23 court or, upon failure to receive such relief, in the Court of
Appeals. Fed. R. App. P. 8(a).

24 ² Newhouse was convicted of three counts of possessing
25 controlled substances with the intent to distribute, in violation
of 21 U.S.C. § 841(a)(1).

26 ³ Newhouse's motion refers to his appellate briefs, the last
27 of which was filed January 18, 2012. See Ex. B in Support of
28 Motion, Dkt. No. 241. Though Newhouse's appellate arguments
raise both probable cause and Batson issues, the instant motion
explicitly focuses on the probable cause issue alone. (Mot. at
5:23, 6:1-2.).

1 on the part of an otherwise exemplary citizen or severe illness.
2 Id. at 1019-1020. The court further held that "various factors may
3 lead the district court to believe that the particular act
4 committed by the defendant . . . is sufficiently dissimilar from
5 the others in that category [of offenses] to warrant a finding of
6 'exceptional reasons.'" Id. at 1019.

7 Here, Newhouse argues that "typical" drug offenses involving
8 maximum sentences of at least ten years involve "illegal-for-any-
9 purpose narcotics like cocaine, heroin, methamphetamine, or
10 marijuana" (Mot. 5.) Because his offenses involved the
11 unlawful resale of otherwise lawful prescription medications,
12 oxycodone, hydromorphone, and hydrocodone, Newhouse argues that his
13 offenses are sufficiently distinct from other drug offenses to
14 constitute "exceptional circumstances." The court disagrees. As
15 the Garcia court itself noted, the "exceptional reasons" provision
16 only applies in "truly unusual circumstances." Id. at 1022.
17 Newhouse points to no unusual circumstance specific to his
18 particular case, but rather asks the court to distinguish
19 prescription drug offenses from all other drug offenses. It is not
20 for this court, however, to determine whether powerful prescription
21 medications such as oxycodone, hydromorphone, and hydrocodone are
22 more or less "serious" than marijuana and other drugs.
23 Accordingly, the nature of Newhouse's specific offenses does not
24 clearly show that "exceptional reasons" warrant his release.

25 Newhouse also argues that there is an unusually strong chance
26 that he will succeed on appeal on the ground that law enforcement
27 officers did not have probable cause to arrest him, and therefore
28 the fruits of the arrest should have been suppressed. (Mot. at 6.)

1 Newhouse contends that he was effectively arrested when Drug
2 Enforcement Agency ("DEA") agents blocked his car with their
3 vehicles and approached Newhouse with guns drawn. (Mot. at 7.)
4 Prior to that time, officials had received complaints from a
5 pharmacy that certain individuals, including one of Newhouse's co-
6 defendants, were presenting multiple prescriptions for controlled
7 prescription medications written by the same doctor, Dr. Sanchez,
8 with whom the DEA was already familiar. (Exhibit B to Opposition
9 to Motion for Release on Bond Pending Appeal at 35.) On February
10 5, 2008, agents observed as three co-defendants, including co-
11 defendant Nelson Rodriguez ("Rodriguez"), filled prescriptions
12 written by Dr. Sanchez. (Id.) The three co-defendants then left
13 the pharmacy with a fourth co-defendant, Leslie Wilson ("Wilson").
14 (Id.) The four drove together in a Honda to a parking lot, where
15 they waited for an hour until Newhouse arrived in a separate
16 vehicle. (Id. at 37-38.) Wilson then exited the Honda and walked
17 over to Newhouse's car with a pharmacy bag in hand and got into
18 Newhouse's car. (Id. at 40.) Shortly thereafter, Wilson exited
19 the car empty-handed and returned to the Honda. (Id. at 44, Mot.
20 at 3) A third car, a Cadillac, also arrived at the parking lot
21 soon after Newhouse. (Ex. B to Opp. at 42.) After Wilson exited
22 Newhouse's car, an individual exited the Cadillac and also entered
23 Newhouse's car. (Id. at 45.) Co-defendant Rodriguez, who had
24 filled a prescription earlier, then exited the Honda and entered
25 Newhouse's car as well. (Id. at 45-46.) Then, as the Honda began
26 to leave the parking lot, DEA agents moved in. (Id. at 52).

1 The arresting officers need only have had "reasonably
2 trustworthy" information of facts and circumstances "sufficient to
3 warrant a prudent man in believing" that a crime had been, or was
4 being, committed. United States v. McCarty, 48 F.3d 820, 838-839
5 (9th Cir. 2011) (quoting United States v. Jensen, 425 F.3d 698, 704
6 (9th Cir. 2005) (internal marks omitted). Here, officers knew that
7 individuals had been filling prescriptions written by a doctor
8 known to the DEA. Several such individuals filled prescriptions
9 for controlled substances, traveled together to a parking lot, then
10 waited for Newhouse. Once Newhouse arrived, one of the occupants
11 of the Honda delivered something to him in a pharmacy bag. Three
12 separate individuals ultimately exited their own vehicles and
13 entered Newhouse's car. Though Newhouse may raise a colorable
14 claim on appeal that the facts as described above were not
15 sufficient to establish probable cause, he has not demonstrated
16 that his chances of success are "unusually strong." The strength
17 of Newhouse's probable cause argument is, therefore, insufficient
18 to constitute an "exceptional reason" to release him from custody
19 pending appeal.

20 **III. Conclusion**

21 For the reasons stated above, Defendant's Motion for Release
22 on Bond Pending Appeal is DENIED.

23
24 IT IS SO ORDERED.

25
26 Dated: April 13, 2012


DEAN D. PREGERSON
United States District Judge